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4955 7590 01/13/2009 WARE FRESSOLA VAN DER SLUYS & ADOLPHSON, LLP BRADFORD GREEN, BUILDING 5 755 MAIN STREET, P O BOX 224 MONROE, CT 06468				
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* SEPPO HAMALAINEN and TERO HENTTONEN

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Appeal 2008-6296  
Application 09/977,578  
Technology Center 2600

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Decided: January 12, 2009

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Before MAHSHID D. SAADAT, ROBERT E. NAPPI,  
and CARLA M. KRIVAK, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1, 2, 6-9, 11, 12, and 16-19. Claims 3-5, 10, 13-15, and 20-33 have been objected to for depending from rejected base claims, but otherwise as containing allowable subject matter. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

## STATEMENT OF THE CASE

Appellants' invention relates to "power control during a compressed mode of data transmission between user equipment and one or more base stations" in a communication network (Spec. 1).

Claim 1, which is representative of the claims on appeal, reads as follows:

1. A method of implementing a compressed mode of operation in a mobile communication network in which data transmission and reception in user equipment is ceased so a required measurement can be made, characterized in that

the power level of data transmission in the user equipment is adjusted to a correct power level before a subsequent data transmission is sent.

The prior art applied in rejecting the claims on appeal is:

Tigerstedt	US 2002/0187784 A1	Dec. 12, 2002 (filed Jun. 6, 2001)
Vukovic	US 2002/0198012 A1	Dec. 26, 2002 (filed Jun. 21, 2001)

Applicants' Admitted Prior Art (AAPA), Figures 2 and 5; pages 1-2 of the Specification.

Claims 1, 2, 6, 11, 12, and 16 stand rejection under 35 U.S.C. § 103(a) based upon the teachings of AAPA and Vukovic.

Claims 7-9 and 17-19 stand rejected under 35 U.S.C. § 103(a) based upon the teachings of AAPA and Vukovic in view of Tigerstedt.

We make reference to the Appeal Brief (filed Feb. 14, 2007), the Reply Brief (filed Oct. 3, 2007), and to the Answer (mailed Jun. 29, 2007) for the positions of Appellants and the Examiner. Only those arguments

actually made by Appellants have been considered in this decision. Arguments which Appellants did not make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

### ISSUES

1. Have Appellants shown that the Examiner erred in rejecting claims 1, 2, 6, 11, 12, and 16 under 35 U.S.C. § 103(a)? The issue specifically turns on whether the combination of AAPA and Vukovic teaches or suggests the claimed subject matter related to the compressed mode of operation and the power level adjustment.
2. Have Appellants shown that the Examiner erred in rejecting claims 7-9 and 17-19 under 35 U.S.C. § 103(a) over AAPA and Vukovic in view of Tigerstedt?

### FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issues involved in the appeal.

#### *Appellants' Specification (AAPA)*

1. Appellants describe the conventional and known state of the transmission and reception of data as follows:

During the compressed mode of operation, the *transmission and reception in the mobile terminal are halted* for a short time, in the order of a few milliseconds, in order to perform the measurements on the other frequencies.  
(Emphasis added.)

(Spec. 2:10-14).

and,

The intention is not to lose data but to compress frames of the data transmission in the time domain, which opens a gap in one or more frames.

(Spec. 2:16-19).

*Vukovic*

2. Vukovic relates to allocating communication channels in response to a received resource access request and an access grant which authorizes the source of the access request to use the communication channel. (Abstract).

3. As depicted in Figure 3, Vukovic discloses that the mobile station (MS) 302 sends communication resource access requests to the base station 306 as the MS 302 adjusts the power level, until an acknowledgment (ACK) is received from the base station 306. (¶ [0021]).

4. The acknowledgement functions as an access grant by the base station 306 which is understood by the MS 302 to mean that MS 302 is authorized to use or granted access to the communication channel. (¶ [0022]).

5. The acknowledgement also informs the MS 302 that an appropriate power level for a subsequent transmission is determined and a traffic channel and the demodulator are available for use. (¶ [0023]).

PRINCIPLES OF LAW

*1. Scope of Claims*

The scope of the claims in a patent application is determined not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction in light of the Specification as it would be

interpreted by one of ordinary skill in the art. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The “broadest reasonable interpretation” rule recognizes that “before a patent is granted the claims are readily amended as part of the examination process.” *Burlington Indus. v. Quigg*, 822 F.2d 1581, 1583 (Fed. Cir. 1987). Thus, a patent applicant has the opportunity and responsibility to remove any ambiguity in claim term meaning by amending the application. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

“[T]he words of a claim ‘are generally given their ordinary and customary meaning.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). Furthermore, the specification is the single best guide to the meaning of a claim term. *Phillips v. AWH Corp.*, 415 F.3d at 1315 (Fed. Cir. 2005).

## 2. *Obviousness*

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

*KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (quoting *KSR*, 127 S. Ct. at 1739-40). “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious

solution encompassed by the patent's claims." *KSR*, 127 S. Ct. at 1742. "[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill." *KSR*, 127 S. Ct. at 1740.

## ANALYSIS

### *Rejection over AAPA and Vukovic*

Appellants argue that neither AAPA, nor Vukovic suggests that an adjustment of the power level of the data transmission is made in a compression mode of operation (App. Br. 9). The Examiner responds that the claims merely require "implementing a compression mode of operation" without claiming that the data transmission and the ceasing of that transmission is in compression mode (Ans. 17). The Examiner concludes that the claimed adjusting of the power level is taught by Vukovic as the MS 302 adjusts the power level until "ACK" is received before any subsequent data transmission is done (Ans. 17-18).

Appellants further assert that the present invention is directed to adjusting the power level of data transmission in the compression mode of operation before a subsequent data is transmitted (Reply Br. 2). Appellants rely on the preamble of claim 1 stating "A method of implementing a compressed mode of operation" and assert that the claim requires the power level of data transmission be adjusted in a compression mode of operation (Reply Br. 3). Appellants further argue that (Reply Br. 5) AAPA does not teach adjustment of power level in a compression mode before a subsequent

data transmission is sent and that (Reply Br. 5-6) the Examiner has not shown Vukovic would suggest the missing features.

Giving the broadest reasonable interpretation in light of the Specification to the claim term without importing limitations, we find the Examiner's interpretation of the claim to be reasonable. The Examiner has taken a broad interpretation of the claim which places the step of power adjustment at any time before data transmission, which may or may not be during a compression mode operation. In fact, Appellants' claims have not clearly required the recited adjustment of the power level to be during a compressed mode of operation. We therefore, as understood by one of ordinary skill in the art, find no error in the Examiner's interpretation of when the power level is adjusted.

Additionally, we note that even if the power adjustment is required to be performed in a compressed mode of operation, AAPA clearly teaches it is during the compressed mode of operation that the transmission of data is halted with the goal of not losing data (FF 1). Upon review of the disclosure of Vukovic, we also agree with the Examiner's findings that the reference teaches power level adjustment before access is granted and data can be transmitted (FF 2-5). The mobile station in Vukovic specifically adjusts the transmission power and waits to receive an acknowledgement indicating authorization to access the channel and to use the demodulator before the next data transmission (FF 4-5).

Giving the broadest reasonable interpretation to the claims and considering our analysis above, we agree with the Examiner's position that combining the AAPA and Vukovic would be recognized by the skilled artisan as obvious enhancements to the power adjustment and halting data



transmission in the compressed mode of operation in AAPA. Consistent with the *Leapfrog* holding, when a combination of familiar elements according to methods known to the skilled artisan (power adjustment at any time before data transmission) achieves a predictable result (halting data transmission during power adjustment), it is likely to be obvious. Accordingly, the rejection of independent claims 1 and 11, as well as claims 6, 12, and 16 argued together as one group (App. Br. 12), under 35 U.S.C. § 103(a) based upon the teachings of AAPA and Vukovic is sustained.

*Rejection over AAPA and Vukovic in view of Tigerstedt*

Appellants rely on the same arguments discussed above with respect to claim 1, which were found to be unpersuasive. Additionally, Appellants assert there is no disclosure in Tigerstedt to make up for the alleged deficiency in AAPA and Vukovic (App. Br. 13).

For the same reasons stated above with respect to claim 1, we sustain the 35 U.S.C. § 103(a) rejection of claims 7-9 and 17-19 over AAPA and Vukovic in view of Tigerstedt.

## CONCLUSION

Because Appellants have failed to point to any error in the Examiner's position, we sustain the 35 U.S.C. § 103 rejection of claims 1, 2, 6-9, 11, 12, and 16-19.

## ORDER

The decision of the Examiner rejecting the claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. 1.136(a)(1)(iv).

AFFIRMED

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